

Tips for Employers to Reduce Workers Compensation Liability

Communication with employees during all phases of the employment relationship is the key to reducing liability.

Inform employees of their workers compensation rights and the 10-day reporting requirements.

The Kansas Workers Compensation Act requires employers to educate and inform employees of their rights to workers compensation benefits as well as the reporting requirements under the Act, K.A.R. 51-13-1 and K.S.A. 44-5,101. K-WC 40 (Workers Compensation Notice) must be posted in a conspicuous place where all workers can see this notice of their rights and responsibilities under the Workers Compensation Act. These notices are free and can be obtained from the Division of Workers Compensation by calling (785) 296-3441 or going online at www.dol.ks.gov.

One of the best ways to inform workers of workers compensation benefits and reporting requirements is during the orientation process. The company might consider including the Notice (K-WC 40) and the Information for Injured Employees (K-WC 27) in every orientation packet and having each worker sign a statement that he received, read and understood the notice.

K.S.A. 44-520 provides that a worker must

give notice of an injury within 10 days after the date of accident, unless the employer has actual notice and knowledge of the accident. The 10-day notice requirement can be extended for up to 75 days if the claimant can establish just cause for failing to notify within 10 days. An employer increases the chance of prevailing on the 10-day notice issue if the employer can demonstrate it took steps to inform all workers of their rights to workers compensation benefits and the 10-day reporting requirements under the 1993 Act.

In *Longhofer v. Advanced Engine Rebuilders, Inc.*, Docket No. 193,037 (October 19, 1994), the Appeals Board for the Division of Workers Compensation held that an employee had good cause for failure to give the 10-day notice when he was unaware of the reporting requirements, had never before filed for workers compensation benefits and the employer admitted that the company had no written policy concerning injuries at work and admitted that a Form K-WC 40 was not posted at the work place, nor was any other notice posted advising the employee what to do in case of injury.

Contrary to popular belief, insurance statistics demonstrate that employers who openly communicate about workers

compensation benefits and rights actually have a lower claims experience than those who do not.

Communicate your concern for the welfare of your employees when they are hurt on the job by providing immediate medical attention.

When someone is legitimately hurt on the job, it is very important to provide immediate quality medical care. In fact, it is often wise to give the employee a choice of three physicians at the onset. Then the employee has input from the very beginning as to his course of medical treatment. Choosing a medical provider is very important. Although cost is a factor, quality should be of utmost importance. It is very important to choose doctors who will spend adequate time, show concern for the employee's well-being and conduct a thorough examination. There is nothing that will cause an employee to hire an attorney faster than uncaring, cursory medical treatment. Injured workers want to be reassured they are receiving good quality medical care. If they have confidence in the medical provider, they will most likely have a positive feeling about their recovery and their prospects for returning to work.

Communicate your concern by sending get-well cards.

The cost of a first-class stamp will go a long way to help reduce liability. Invest in a supply of get-well cards. Not only should management send a get-well card, but the co-workers and supervisors also should be encouraged to send a get-well card or note. This concept goes back to the

basic tenet of common courtesy. If we treat others as we would want to be treated in the same situation, the lines of communication stay open, and the employer/employee relationship stays successfully in tact.

Send a letter telling the employee you are holding his job for him.

One of the biggest factors in litigation is uncertainty. Communication alleviates uncertainty. By sending a letter to your injured worker telling him you are holding his job for him, you increase the chances that he will not feel the need to contact a lawyer. Communication between the employer and the employee after the injury reduces the chance of litigation.

Utilize temporary service workers to provide temporary help so the job can be held for the employee.

Many employers do not have enough workers and they cannot afford to be without help. Rather than permanently filling the injured worker's position, the services of a temporary agency could be utilized. Temporary service workers provide a stopgap measure so that the injured worker's job can be held for him once he is released from medical treatment. In addition, once the temporary service worker is laid off, the temporary agency is liable for any unemployment benefits. Likewise, if the temporary worker is injured while working on your premises, the temporary agency is liable for the workers compensation benefits. A temporary service worker is a win/win situation for all sides. By preserving the employer/employee relationship and holding

the injured worker's job, the employer will greatly reduce the potential liability. The 1993 Legislature amended K.S.A. 44-510e(a). The statute prohibits an employee from receiving a work disability in excess of his functional impairment as long as the employee is engaging in any work for wages equal to 90 percent or more of the average gross weekly wage that the employee was earning at the time of injury. The work disability portion of the statute is triggered only if the employer fails to return the claimant to work or make a reasonable accommodation offer for the medical restrictions.

While the injured worker is off work, pay the difference between his temporary total disability and his salary, if possible.

Temporary total disability reimburses the worker 66 2/3 percent of his weekly salary, up to the statutory maximum per week. Most of us would have to admit that if we had a one-third immediate reduction in our salary, it would cause a budget crunch in the family. Employers can go a long way to building goodwill with their injured workers by supplementing their temporary total disability with the one-third remaining salary. This should only be done if it is financially feasible. The failure to do so will not be catastrophic to the employer/employee relationship.

Keep in close personal contact with the employee on a weekly basis.

A representative of the employer should be designated to have weekly contact with injured workers. This contact could be in person or by telephone. The more contact the employer has with the employee, the less likely litigation will result on the claim.

Offer the employee a light duty job and communicate this offer in writing.

Many times workers, while undergoing medical care and treatment, have certain restrictions. If you have light duty work available, immediately offer such work to the worker. It makes more economic sense to a worker to be earning a full weekly wage rather than two-thirds of a weekly wage.

Return an injured worker to work as soon as possible and make accommodations.

One of the biggest factors in litigation is when workers return to work they feel their medical restrictions are not accommodated. These problems can be avoided by sitting down with the employee, one on one, and coming up with a return-to-work plan. This way the injured worker has input into the return-to-work plan, the job and the job duties. Employers who knowingly and intentionally violate doctors' restrictions are virtually guaranteeing themselves that work-related injuries will turn into full-blown litigation.

Prepare the injured worker's co-workers for his return to work.

When an injured worker returns to work but cannot perform all his prior work tasks, a tense situation can arise between the injured worker and co-workers. The employer has the obligation to diffuse this kind of tension and prevent it from occurring. The best prevention is educating co-workers on the employer's return-to-work policy and the requirements of the Americans With Disabilities Act. It is very important for the employer to notify co-workers that teasing and harassment of an injured worker will not be tolerated and will result in disciplinary action, up to and including termination.

Communicate with your insurance carrier or self-insured employer to get them to make timely payments.

As an employer, you pay a premium. Part of the premium goes for claims service. Although insurance adjusters are very busy people, most of them do a good job. Occasionally, neglect on the part of the carrier will cause extreme frustration and cause the claim to become litigated. There is nothing more frustrating to an injured worker than having to deal with a claims adjuster's voice mail and never being able to talk to a human being. Since you, as the employer, have paid the premium, you have the right to demand good service on the claim. Make certain that you convey

your desire to have the medical bills and temporary total payments paid in a prompt and timely manner. Bills that are not paid result in collection suits against injured workers, which in turn result in the worker hiring a lawyer. Untimely checks glean the same results.

Do not ignore workers compensation problems.

For years, there has been a management philosophy that if problems are ignored, they will go away. This "ignore it" philosophy is a prominent characteristic of many companies. Ignoring problems will not make them go away. It will only cause claims to blow up, get out of control and be litigated in perpetuity.

Communication and common courtesy will build good will.

Communication and common courtesy will build more good will than ignoring the situation. If every employer treats every injured worker as though he were a relative, litigation, litigation costs, attorney fees and payouts for workers compensation claims would dramatically decline. Workers compensation claims involve human relationships. An employer enhances that relationship and reduces the potential liability by openly communicating with workers and practicing common courtesy.